

(iv) Any other suitable circumstances in which, with the concurrence of the Chief Administrative Law Judge, the Settlement Judge determines that a personal meeting is necessary for a resolution of substantial issues in a case and the holding of a conference represents a prudent use of resources.

(2) *Participation in conference.* The Settlement Judge may recommend that the attorney or other representative who is expected to try the case for each party be present, and, without regard to the scope of the attorney's or other representative's powers, may also recommend that the parties, or agents having full settlement authority, be present. The parties, their representatives, and attorneys are required to be completely candid with the Settlement Judge so that he may properly guide settlement discussions. The failure to be present at a settlement conference or the refusal to cooperate fully within the spirit of this rule may result in the termination of the settlement proceeding under this section. The Settlement Judge may make such other and additional requirements of the parties and persons having an interest in the outcome as to him shall seem proper in order to expedite an amicable resolution of the case. No evidence of statements or conduct in proceedings under this section will be admissible in any subsequent hearing, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena.

(d) *Report of Settlement Judge.* (1) With the consent of the parties, the Settlement Judge may request from the Chief Administrative Law Judge an enlargement of the time of the settlement period not exceeding 20 days. This request, and any action of the Chief Administrative Law Judge in response thereto, may be written or oral.

(2) Under other circumstances the Settlement Judge, following the expiration of the settlement period or at such earlier date that he determines further negotiations would be fruitless, shall promptly notify the Chief Administrative Law Judge in writing of the status of the case. If he has not approved a full settlement pursuant to

§ 2200.100 of these rules, such report shall include written stipulations embodying the terms of such partial settlement as has been achieved during the assignment.

(3) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to a different Administrative Law Judge for appropriate action on the remaining issues, unless the parties request otherwise. The Settlement Judge shall not discuss the merits of the case with any Administrative Law Judge or other person, nor be called as a witness in any hearing of the case.

(e) *Non-reviewability.* Any decision concerning the assignment of a particular Settlement Judge or the decision by any party or Settlement Judge to terminate proceedings under this section is not subject to review by, appeal to, or rehearing by any subsequent presiding officer, the Chief Administrative Law Judge, or the Commission.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987; 62 FR 35963, July 3, 1997]

#### § 2200.102 Withdrawal.

A party may withdraw its notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period at any stage of a proceeding. The notice of withdrawal shall be served in accordance with § 2200.7(c) upon all parties and authorized employee representatives that are eligible to elect, but have not elected, party status. It shall also be posted in the manner prescribed in § 2200.7(g) for the benefit of any affected employees not represented by an authorized employee representative who are eligible to elect, but have not elected, party status. Proof of service shall accompany the notice of withdrawal.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987]

#### § 2200.103 Expedited proceeding.

(a) *When ordered.* Upon application of any party or intervenor or upon its own motion, the Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Commission, the Executive Secretary shall notify all parties and intervenors.

(b) *Automatic expedition.* Cases initiated by employee contests and petitions for modification of abatement period shall be expedited.

(c) *Effect of ordering expedited proceeding.* When an expedited proceeding is required by these rules or ordered by the Commission, it shall take precedence on the docket of the Judge to whom it is assigned, or on the Commission's review docket, as applicable, over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(d) *Time sequence set by Judge.* The assigned Judge shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, may order daily transcripts of the hearing, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

#### § 2200.104 Standards of conduct.

(a) *General.* All representatives appearing before the Commission and its Judges shall comply with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association.

(b) *Misbehavior before a Judge—(1) Exclusion from a proceeding.* A Judge may exclude from participation in a proceeding any person, including a party or its representative, who engages in disruptive behavior, refuses to comply with orders or rules of procedure, continuously uses dilatory tactics, refuses to adhere to standards of orderly or ethical conduct, or fails to act in good faith. The cause for the exclusion shall be stated in writing, or may be stated in the record if the exclusion occurs during the course of the hearing. Where the person removed is a party's attorney or other representative, the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or other representative.

(2) *Appeal rights if excluded.* Any attorney or other representative excluded from a proceeding by a Judge may, within five days of the exclusion, appeal to the Commission for reinstatement. No proceeding shall be de-

layed or suspended pending disposition of the appeal.

(c) *Disciplinary action by the Commission.* If an attorney or other representative practicing before the Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Commission or its Judges, the Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Commission.

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (c) of this section shall be served upon the affected party by certified mail, return receipt requested.

[51 FR 32015, Sept. 8, 1986, as amended at 55 FR 22783, June 4, 1990]

#### § 2200.105 Ex parte communication.

(a) *General.* Except as permitted by § 2200.101 or as otherwise authorized by law, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives or other interested persons.

(b) *Disciplinary action.* In the event an ex parte communication occurs, the Commission or the Judge may make such orders or take such actions as fairness requires. The exclusion of a person by a Judge from a proceeding shall be governed by § 2200.104(b). Any disciplinary action by the Commission, including suspension or disbarment, shall be governed by § 2200.104(c).

(c) *Placement on public record.* All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

#### § 2200.106 Amendment to rules.

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any